

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
2.59.1701 pertaining to definitions; the	)	ON PROPOSED AMENDMENT,
adoption of NEW RULES I through IX	)	ADOPTION, AND REPEAL
regarding mortgage loan originator	)	
licensing; and the repeal of ARM	)	
2.59.1705 pertaining to continuing	)	
education provider requirements	)	

TO: All Concerned Persons

1. On May 20, 2010, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on May 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) remains the same.

(2) "Compensation or gain" means the receipt or the expectation of receiving anything of value in conjunction with offering or negotiating terms of a residential mortgage loan and is not limited to payments that are contingent upon the closing of a loan.

(3) "Dwelling" means a residential structure that contains one to four residential units whether or not that structure is attached to real property and includes an individual condominium unit, cooperative unit, mobile home, and a trailer, if used as a residence.

(2) remains the same, but is renumbered (4).

(5) "Extant" means currently or actually existing; still existing; not destroyed or lost.

(3) and (4) remain the same, but are renumbered (6) and (7).

(8) "Mortgage loan servicer" means one who performs traditional mortgage loan servicing tasks such as sending monthly payment statements; collecting monthly payments; maintaining records of payments and balances; collecting and paying taxes and insurance; remitting funds to note holders; or following up on delinquencies provided the follow-up does not include offering or negotiating loan modifications or refinances.

(5) through (8) remain the same, but are renumbered (9) through (12).

AUTH: 32-9-125, 32-9-130, MCA

IMP: 32-9-102, 32-9-103, 32-9-109, 32-9-116, 32-9-117, 32-9-120, 32-9-122, 32-9-123, 32-9-125, 32-9-127, 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: The definitions included in this rule are needed to clarify terms found in the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act (the Act).

The definition of "compensation or gain" is consistent with the definition and explanation of the same term in the U.S. Department of Housing and Urban Development's (HUD) rule proposal notice, 24 CFR Parts 30, 3400, Docket No. FR-5272-P-01, dated November 11, 2009, implementing the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act), Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 1501-1517, 122 Stat. 2654, 2810-2824 [July 30, 2008]).

The term "dwelling" is found in the definition of "residential mortgage loan" in 32-9-103(30), MCA. The definition of "dwelling" in this rule is consistent with the definition of that term in Regulation Z, section 226.2, implementing Truth in Lending, 15 USC 1601, et seq. and is necessary to understand the scope of the term "residential mortgage loan".

The term "extant" is used in NEW RULE IX and clarifies why a conviction that disqualifies an individual from licensure under 32-9-120(1)(b), MCA, is not nullified by the expungement of the record of the conviction. Only a pardon nullifies the conviction. The term and its definition and usage in the context of expunged convictions in NEW RULE IX are consistent with HUD's rule proposal notice.

The department has received several questions from the public about whether "mortgage loan servicers" must be licensed. The definition of that term in this rule clarifies that traditional loan servicer activities are distinguished from loan originator activities. The definition is consistent with HUD's position on mortgage loan servicers expressed in its rule proposal notice. A mortgage loan servicer would not need to be licensed provided the servicer does not offer or negotiate loan terms with borrowers including terms of loan modifications or refinancing within the meaning of "mortgage loan originator" under 32-9-103(23), MCA. HUD has stated that loan servicers often perform tasks that go beyond traditional loan servicer activities. Such nontraditional activities sometimes include negotiating modifications of residential mortgage loans or terms of refinancing requiring licensure. Job titles do not determine whether individuals must be licensed. Four additional citations to the Montana Code Annotated are being added to the existing implementation citations for the rule to reflect that the new terms being defined in the rule implement those statutes.

4. The proposed new rules provide as follows:

NEW RULE I LICENSING EXEMPTIONS AND VOLUNTARY REGISTRATION BY EXEMPT ENTITIES WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS) (1) Any person claiming to be exempt under 32-9-104, MCA, from the licensing requirements of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act must receive an exemption from the department before engaging in activities claimed to be exempt. A claim form may be found online at [www.banking.mt.gov](http://www.banking.mt.gov).

(2) A mortgage company entity that is exempt from licensing requirements under 32-9-104, MCA, may voluntarily register through NMLS for the purpose of sponsoring a mortgage loan originator licensee or license applicant. Any fee for such registration must be determined by NMLS and must be payable as directed by NMLS.

(3) For purposes of the licensing exemption in 32-9-104(1)(j), MCA, "bona fide low income individuals" are individuals:

(i) whose income is at or below the U.S. Department of Health and Human Services Poverty Guidelines for Montana in effect at the time the loan application is processed, adjusted for size of household, as published in the Federal Register under authority of 42 USC 9902(2);

(ii) whose income does not exceed 80% of the median income in the applicable area of Montana as determined by the U.S. Department of Housing and Urban development, adjusted for size of household; or

(iii) who are eligible under the income criteria for Habitat for Humanity housing assistance in the Montana county of the individual's residence.

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to establish the procedure for asserting an exemption claimed under 32-9-104, MCA. Section (2) providing for voluntary registration through NMLS by exempt mortgage companies allows those entities to sponsor loan originators/applicants that must be licensed even though the mortgage company entity itself is exempt from licensure. An exempt entity may voluntarily obtain a registration through the NMLS in order to manage its employees or to provide a surety bond covering their employees' mortgage loan origination activities.

Section (3) clarifies the exemption for certain 501(c)(3) corporations from licensing requirements under 32-9-104(1)(j), MCA. The term "bona fide low income individuals" is not defined in statute. The department reviewed numerous sources for information concerning "low income" individuals, including the U.S. Census Bureau median income statistics by state and by size of household, maximum household income for Habitat for Humanity eligibility, the definition of "low-income" in 90-6-132, MCA, related to Montana Board of Housing housing assistance, and the "U.S. Department of Health and Human Services Poverty Guidelines." The figures vary widely. The department specifically invites public comment on its proposed

definition of "bona fide low income individuals" to ensure that the exemption provided in 32-9-104(1)(j), MCA, is neither too narrowly nor too broadly interpreted.

**NEW RULE II REQUEST FOR CORRECTION OR AMENDMENT OF DEPARTMENT-GENERATED RECORD IN THE NMLS**

(1) For purposes of accuracy or completeness, a person about whom the department has generated a record in the NMLS may make a written request to the department that it correct or amend the record. The written request must not exceed one side of an 8x11 sheet of paper in length and must concisely set out the basis for the person's contention that the record is either inaccurate or incomplete. At the time of making the written request for correction or amendment, the person shall provide a copy of any documentation that the person wishes the department to consider supporting the contention that the department's record is inaccurate or incomplete.

(2) As promptly as required by the circumstances after receiving a request as provided in (1), the department shall:

- (a) make the requested correction or amendment; or
- (b) inform the person in writing of the department's refusal to correct or amend the record and the reason for the refusal.

(3) A copy of the person's concise written statement as provided for in (1), the department's written refusal to correct or amend the record, and the reason for the refusal must be made available to any person requesting it from the department.

AUTH: 32-9-130, MCA

IMP: 32-9-155, MCA

**STATEMENT OF REASONABLE NECESSITY:** Section 32-9-155, MCA, requires that the department provide a means by which mortgage brokers, mortgage lenders, and mortgage loan originators may challenge information entered into NMLS by the department. This rule implements that requirement by providing a fair opportunity and procedure for a person to establish the record is wrong or incomplete or to have the person's disagreement with the department's record be made known. In drafting this rule, the department reviewed other states' rules relating to the issue as well as Montana laws relating to challenges to the accuracy of health care records. This rule incorporates what the department deemed were the best elements from several sources.

**NEW RULE III MORTGAGE LOAN ORIGINATOR LICENSING EXAM**

**RETAKES** (1) A candidate for mortgage loan originator licensure shall request and pay for a separate test enrollment through the NMLS at <http://www.nationwidelicensingsystem.org> each time the candidate takes a national or state examination component.

(2) Retakes of the mortgage loan originator licensing examination following failed attempts and the waiting periods applicable to retakes are governed by the following table:

TEST ATTEMPT	TEST RESULT	RETAKE WAITING PERIOD
Initial	Fail	30 days
2nd	Fail	30 days
3rd	Fail	30 days
4th	Fail	180 days
Initial	Fail	30 days
(Retake cycle repeats)		

(3) The waiting period between exam attempts applies independently to each examination component (national and state). Failing one component does not impose a waiting period for another component.

(4) Candidates who pass an examination component may not retake that examination component again except as provided in (6).

(5) A candidate may request and pay for a new test enrollment window through NMLS immediately following the failure of an examination. The window will not allow the candidate to reschedule the examination for a date before expiration of the applicable waiting period.

(6) If an individual fails to continuously maintain a valid current Montana mortgage loan originator license or registration or combination thereof for a five-year period, but has maintained a mortgage loan originator license in another state or a mortgage loan originator registration or combination thereof during that period, the individual shall reapply for a license, requalify, pay the applicable fee, and shall retake and pass only the state component examination as a prerequisite to being relicensed in Montana. For purposes of determining failure to continuously maintain a "valid current" Montana license for a five-year period, a suspended license is not deemed a "valid current" Montana license during the period of suspension.

AUTH: 32-9-130, MCA

IMP: 32-9-110, MCA

**STATEMENT OF REASONABLE NECESSITY:** This rule is necessary to clarify that NLMS will administer test enrollments, test administrations (both state and national components), and fees. The department's share of fees is remitted to it by NMLS. The rule is a resource for applicants at the state level so confusion between state and NMLS roles is minimized.

The rule also implements and clarifies the examination waiting periods set by 32-9-110(5) and (6), MCA. Subection (5) of that statute refers to "retakes" of the test. The term "retakes" does not include the initial attempt to pass it. In contrast, subsection (6) of the statute does not refer to "retakes" but only to "tests." There has been considerable confusion even among the department's staff members as to whether a loan originator applicant must wait 180 days after failing their third consecutive test or whether the 180-day waiting period applies only after the applicant fails their fourth consecutive test, i.e., their third "retake." The table included in this rule comes from the NMLS web site and it clarifies the narrative text of 32-9-110(5) and (6), MCA.

In its comment to HUD's proposed rules implementing the SAFE Act, the Conference of State Bank Supervisors (CSBS) requested that HUD adopt an interpretation consistent with the table contained in this rule thereby resolving any ambiguity in the SAFE Act in favor of test candidates. This rule will be amended if HUD's final rule conflicts with it, but the department does not expect that CSBS's comment to HUD will be controversial.

The prohibition against retaking a test component already passed, except as provided by 32-9-110(7), MCA, helps preserve the integrity of the tests by minimizing unnecessary exposure of test questions to persons who have already passed the test. The prohibition helps to ensure that persons who take the examinations do so in order to be licensed, not to gain knowledge of the test questions for other purposes.

Section (6) of the proposed rule clarifies that the reference to "a valid license" in 32-9-110(7), MCA, refers to a current valid Montana license. It further clarifies that only the state component of the test need be retaken and passed if the applicant has maintained a mortgage loan originator license in another state or a registration as provided in 32-9-104(1)(c), MCA, during any five-year period that the applicant did not maintain a valid current license in Montana. A person whose license is suspended is not authorized to engage in activities requiring licensure.

NEW RULE IV ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NMLS (1) The Nationwide Mortgage Licensing System Policy Guidebook dated January 25, 2010, is approved and adopted by reference. It can be found at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) MU1 Uniform Mortgage Lender/Mortgage Broker form dated January 25, 2010;

(b) MU2 Uniform Mortgage Biographical Statement & Consent Form dated January 25, 2010;

(c) MU3 Uniform Mortgage Branch Office Form dated January 2, 2008; and

(d) MU4 Uniform Individual Mortgage License/Registration & Consent Form dated January 25, 2010.

(3) Copies of the NMLS forms are available on the department's web site [www.banking.mt.gov](http://www.banking.mt.gov) for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically. Supplemental hard copy materials required for verification of qualifications must be submitted to the department at Division of Banking and Financial Institutions, 301 S. Park Ave., P.O. Box 200546, Helena, MT 59620-0546.

AUTH: 32-9-130, MCA

IMP: 32-9-105, 32-9-107, 32-9-112, 32-9-114, 32-9-117, 32-9-118, 32-9-127, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for all types of licenses and for registrations authorized under Title 32, Chapter 9, MCA, use NMLS standardized forms and submit them electronically through the NMLS. Use of standardized forms and NMLS procedures facilitate uniformity among the states to the maximum extent possible, which is consistent with the purposes of the NMLS and the SAFE Act.

NEW RULE V TRANSITION AND INITIAL LICENSE APPLICATION THROUGH NMLS – LICENSE RENEWALS – FEES (1) Each mortgage broker entity, mortgage broker branch, mortgage lender entity, mortgage lender branch, and mortgage loan originator holding a temporary Montana license that expires on April 1, 2010, shall properly complete and submit a license application through NMLS by March 1, 2010. A license issued under this rule is valid for the period April 1, 2010, through December 31, 2010. The department's prorated fees for the license period April 1, 2010, through December 31, 2010, are:

Mortgage Broker Entity	\$375.00
Mortgage Broker Branch	187.50
Mortgage Lender Entity	562.50
Mortgage Lender Branch	187.50
Mortgage Loan Originator	300.00

The department's prorated fees must be remitted directly to the department at Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546 by check or money order. In addition to the state fees, the NMLS charges processing fees that must be submitted to the NMLS.

(2) Each mortgage broker entity, mortgage broker branch, and mortgage loan originator holding a temporary Montana license that expires June 30, 2010 shall properly complete and submit a license application through the NMLS by May 31, 2010. A license issued under this section is valid for the period July 1, 2010 through December 31, 2010. The department's prorated fees for the license period of July 1, 2010, through December 31, 2010 are:

Mortgage Broker Entity	\$250.00
Mortgage Broker Branch	125.00
Mortgage Loan Originator	200.00

The department's prorated fees must be remitted directly to the department at Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546 by check or money order. In addition to the state fees, the NMLS charges processing fees which must be submitted to the NMLS.

(3) Licenses issued under this rule expire December 31, 2010. Licensees shall submit their renewal applications by December 1 of each year to assure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

Mortgage Broker Entity	\$500.00
Mortgage Broker Branch	250.00
Mortgage Lender Entity	750.00
Mortgage Lender Branch	250.00
Mortgage Loan Originator	400.00
(except as provided in 32-9-117, MCA)	

AUTH: 32-9-117, 32-9-130, MCA  
IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule V is necessary in order to transition from the temporary/provisional licenses issued by the department under ARM 2.59.1718, 2.59.1719, or 2.59.1720 to the initial licenses issued by the department through the NMLS for a partial year at a prorated fee. Remittal of prorated fees to the department directly under (1) and (2) is necessary because NMLS is not able to accept and process state fees in less than the total amount for a full year. By December 31, 2010, licensees will be regularly renewing their Montana licenses through NMLS for a one-year term at the full renewal fee. After December 31, 2010, all fees will be remitted through NMLS, and NMLS will remit the department's fees to it.

The department anticipates that there will be no fiscal impact. The transitional license fees represent a proration of the regular license renewal fees that have been previously charged to mortgage brokers, mortgage lenders, and mortgage loan originators. Proration of the fees is appropriate because as a result of the transition to the NMLS, the department will be issuing licenses for a period less than one year. There is no change to the regular renewal fees which are also equivalent to what has been charged previously. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 73 mortgage broker entities, 34 mortgage broker branches, 87 mortgage lender entities, 88 mortgage lender branches, and 718 mortgage loan originators.

NEW RULE VI CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(2), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

- (a) State Regulatory Registry, LLC; and
- (b) Multi-State Mortgage Committee.

AUTH: 32-9-130, 32-9-160, MCA  
IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: Montana's effective participation in the NMLS is dependent upon being able to share information and material with government agencies and governmental associations representing governmental agencies including confidential information, provided that its confidential character is maintained.



The State Regulatory Registry, LLC, (SRR) was established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). SRR's job is to develop and operate nationwide systems for state regulators in the financial services industry to enhance their abilities to protect consumers, improve supervision of and enforcement against licensees, and to streamline licensing and other processes for state agencies and the industry through use of technology and centralization of redundant state agency operations.

The Multi-State Mortgage Committee was established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The Committee's job is to develop a framework for the coordination and supervision of entities licensed by multiple states (i.e., multi-state mortgage entities or "MMEs") and a protocol for regulating MMEs, making the best use of resources such as joint or concurrent financial examinations with other states and assuring consistency and quality of the supervisory processes. This rule is needed to facilitate those processes.

**NEW RULE VII REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES** (1) Upon expiration of a license under 32-9-117, MCA, due to nonrenewal by the renewal date, the licensee shall immediately cease from engaging in the activities for which the license was issued. Except as provided in (3), the department may reinstate an expired license, provided that, within 30 days of the date of expiration, the following are submitted:

- (a) a properly completed license renewal application through NMLS;
- (b) the renewal fee;
- (c) the NMLS fee;
- (d) a late renewal fee of \$250;
- (e) proof that the licensee continues to meet standards for licensure under 32-9-127, MCA; and
- (f) proof of continuing education compliance.

(2) An expired license that is not reinstated within 30 days of the date of expiration in accordance with (1) is cancelled and may not be reinstated except as provided in (3). The holder of a cancelled license may reapply as a new license applicant.

(3) If nonrenewal and expiration of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

- (a) a properly completed paper renewal application;
- (b) a full year renewal fee or, if the application is submitted on or after July 1, a half-year renewal fee;
- (c) the NMLS fee;
- (d) proof of completion of 12 hours of approved continuing education;

(e) copies of the federal government orders by which the licensee was placed on active duty status and discharged from active duty status; and

(f) proof that the licensee continues to meet standards for licensure under 32-9-127, MCA.

(4) Upon suspension of a license under 32-9-126, MCA, the licensee shall immediately cease from engaging in the activities for which the license was issued. The department may lift the suspension and reinstate the license upon its determination that the licensee has complied with the terms and conditions of the final order by which the license was suspended and there is no fact or condition then existing that disqualifies the licensee from being licensed. The department on its own or at the licensee's request may initiate a review of a suspended licensee's compliance with the terms and conditions of the order suspending the license.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to clarify the effect of the license statuses identified in 32-9-117(2) and 32-9-126(4), MCA, and identify when and under what circumstances licenses in those statuses may be reinstated and when and under what circumstances a new application for license has to be submitted. Defining a time period during which an expired license may be reinstated and after which a new license application is necessary encourages timely renewals and facilitates the orderly administration of the renewal process by staff.

The rule also sets a procedure by which a license that has expired while an individual is on active duty status can be reinstated at a later date without payment of a late renewal fee and without having to reapply as a new applicant. The NMLS removes license sponsorships when the license is set to be terminated/cancelled for nonrenewal. Therefore, following discharge from active duty status, the licensee should request that their employing mortgage broker or mortgage lender submit a new sponsorship request and NMLS fee to reestablish the sponsorship. Because continuing education courses for mortgage loan originators are available online, the requirement for compliance with continuing education requirements when renewing following discharge from active duty status should not pose an undue hardship on licensees who were on active duty status.

Suspension of a license may not occur except in the context of a notice and opportunity for hearing. To lift a suspension and reinstate the license requires the department to affirmatively determine whether the licensee has satisfied the requirements set by the order suspending the license and thus cannot be accomplished by paying a fee or applying anew.

NEW RULE VIII MORTGAGE CALL REPORTS (1) The mortgage call reports required to be submitted to the NMLS by mortgage brokers and mortgage lenders must be submitted on the form required by NMLS as frequently and on such dates as the NMLS sets.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the loan originator's activities are included in the

mortgage call reports of the loan originator's employing mortgage broker or mortgage lender.

AUTH: 32-9-130, MCA

IMP: 32-9-151, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to implement 32-9-151, MCA. NMLS shall determine the content and form of the call reports. The form is expected to be available in 2011. Section (2) incorporates HUD's position that loan originators must be responsible for ensuring inclusion of their loans in their employing entities' mortgage call reports while preserving the responsibility of the mortgage broker and mortgage lender entities to submit the reports as required by 32-9-151, MCA. HUD stated in its rule proposal notice that responsibility of the mortgage loan originators to ensure that the loans they originate are included in the call reports would not prevent the reports from being submitted at the institutional level by mortgage brokers and mortgage lenders.

NEW RULE IX EXPUNGEMENT OF FELONY RECORD (1) An individual is ineligible for a mortgage loan originator license or license renewal, even if the record of the individual's felony conviction of the type referred to in 32-9-120, MCA, has been expunged.

(2) Ineligibility for licensure is triggered by the conviction and not by an extant record of the conviction.

AUTH: 32-9-130, MCA

IMP: 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to eliminate the confusion that exists concerning the effect of an expungement of the record of a conviction following, for example, the successful completion of a period of deferred sentence. The rule content is consistent with the position taken by HUD in the Assistant Secretary for Housing-Federal Housing Commissioner's rule notice dated November 11, 2009, 24 CFR Parts, 30, 3400, Docket No. FR-5271-P-01. Confusion relating to the effect of an expungement arises on a regular basis. Under 32-9-120(1)(b), MCA, only a pardon nullifies a conviction.

5. The department proposes to repeal the following rule:

2.59.1705 CONTINUING EDUCATION PROVIDER REQUIREMENTS, found on Administrative Rules of Montana page 2-6135.

AUTH: 32-9-130, MCA

IMP: 32-9-118, MCA

STATEMENT OF REASONABLE NECESSITY: In order to meet its mandate under the SAFE Act, NMLS requires that those individuals/organizations who desire to have their continuing education courses approved by NMLS must first register and

be granted approval to become "NMLS Approved" continuing education providers. Upon becoming NMLS-approved, course providers can then submit to have their courses approved by NMLS. NMLS's approval process for both course providers and courses assures that the quality of continuing education is consistent from state to state. That is important because under 32-9-118(3), MCA, an individual who has satisfactorily completed an NMLS-approved continuing education course anywhere must be given credit for that course for purposes of meeting the continuing education requirements in Montana. Because NMLS is administering the continuing education requirements of the SAFE Act, this rule is no longer necessary.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [lschneider@mt.gov](mailto:lschneider@mt.gov), and must be received no later than 5:00 p.m., May 28, 2010.

7. Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.mcp>x. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [cromano@mt.gov](mailto:cromano@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Jeff Essman, the primary bill sponsor of SB 351 (2009), was provided a copy of the working draft of the substantive content of the rules proposal on January 15, 2010, by U.S. mail at the address for him on the Secretary of State's

register of legislator contact information and his comments were invited. None were received.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State April 19, 2010.